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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

RMW

22 ERIC RUBAKER, et al., individually and on  
 23 behalf of other similarly situated persons,

24 Plaintiffs,

25 v.

26 SPANSION, LLC; SPANSION, INC.,

27 Defendants.

C 09 00842 HRL  
 Case No. 09-00842

28 COMPLAINT FOR DAMAGES FOR  
 VIOLATION OF THE WORKER  
 ADJUSTMENT AND RETRAINING  
 NOTIFICATION ACT (29 U.S.C. § 2101 et  
 seq.; Cal. Labor Code § 1400 et seq.)

**DEMAND FOR JURY TRIAL**

**CLASS ACTION**

ORIGINAL

1 Plaintiff Eric Rubaker, individually and on behalf of all others similarly situated, for his  
2 Complaint against defendants Spansion, LLC and Spansion, Inc., states as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court's jurisdiction is based on 28 U.S.C. § 1331 as well as 29 U.S.C. §§ 2102,  
5 2104(a)(5) and California Labor Code § 1404 of the Worker Adjustment and Retraining Notification Act  
6 (the United States and California Worker Adjustment and Retraining Notification Acts are referred to  
7 herein collectively as "WARN Act" unless otherwise stated) (29 U.S.C. § 2101 *et. seq.*; California Labor  
8 Code § 1400 *et. seq.*).

9 2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and section 5(a)(5) of  
10 the WARN Act (29 U.S.C. § 2104(a)(5)) because Defendants do business in this district, are  
11 headquartered in this district, and the acts constituting the violation of the WARN Act complained of  
12 occurred, and the claim arose in, this district.

13 **INTRADISTRICT ASSIGNMENT**

14 3. This case should be assigned to the San Jose Division per Local Rule 3-2(e) because  
15 Defendants are headquartered in Santa Clara County and a substantial part of the acts constituting the  
16 violation of the WARN Act complained of, occurred, and the claim arose in, Santa Clara County.

17 **PARTIES**

18 4. Plaintiff Eric Rubaker was a full-time employee of Defendants who, in addition to other  
19 substantial employee benefits, earned regular compensation and was damaged by Defendants' acts in  
20 violation of the WARN Act.

21 5. Defendant Spansion, LLC is a Delaware limited liability company that manufactures  
22 computer memory chips and is registered to do business in the state of California.

23 6. Defendant Spansion, Inc. is a Delaware corporation that manufactures computer memory  
24 chips and is registered to do business in the state of California.

25 7. Defendants Spansion, LLC and Spansion, Inc., (collectively "Defendants"), are a single  
26 employer in that, based on information and belief, they share common ownership, corporate directors  
27 and officers, and corporate headquarters in California. Defendants have fully integrated and  
28 interdependent business operations and share personnel policies that emanate from a common source.

## FACTS

8. Plaintiff was employed full time as a plant maintenance specialist at Defendants' Sunnyvale, California manufacturing facility and corporate headquarters.

9. On or about February 23, 2009, Defendants announced that they would be terminating employees. Plaintiff was terminated and, on information and belief, at least 50 employees were terminated, effective immediately.

10. Plaintiff, and all other similarly situated persons, were terminated by Defendants beginning on or about February 23, 2009, and did not receive the notice required by the WARN Act.

## **CLASS ACTION ALLEGATIONS**

11. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23(a),  
(b)(1) and (3) and the WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor Code § 1404).

12. Plaintiff brings this action on behalf of himself and all other similarly situated employees. Plaintiff seeks to represent a Class initially defined as: "All of Defendants' employees that were terminated from employment on or about February 23, 2009 or in the 30 days following that date without 60 days advance written notice required by the WARN Act."

13. Plaintiff and class members are “affected employee(s)” subject to an “employment loss,” as those terms are defined in the WARN Act, 29 U.S.C. § 2101(a)(5) and (6).

14. Plaintiff and class members are “employees” at a “covered establishment” subject to a “mass layoff” and/or “termination” as those terms are defined in the California WARN Act, California Labor Code § 1400(h), (a), (d) and (f), respectively.

15. Plaintiff's claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action.

16. The members of the class exceed 100 in number, and joinder is therefore impracticable. The precise number of class members and their addresses are readily determinable from the books and records of Defendants.

17. There are common questions of fact and law as to the class that predominate over any questions affecting only individual class members. The questions of law and fact common to the class arising from Defendants' actions include, without limitation, the following:

- 1 a. Whether the provisions of the WARN Act apply;
- 2 b. Whether Defendants' employee terminations on or about February 23, 2009, and
- 3 within 30 days thereafter, constitute a "plant closing" "termination" and/or "mass
- 4 layoff" under the WARN Act;
- 5 c. Whether Defendants failed to provide the notices required by the WARN Act (29
- 6 U.S.C. § 2102(b); Cal. Labor Code § 1401);
- 7 d. Whether Defendants can avail themselves of any of the provisions the WARN Act
- 8 permitting lesser periods of notice;
- 9 e. The appropriate formulae to measure damages under the WARN Act (29 U.S.C. §
- 10 2104(a); Cal. Labor Code § 1402); and
- 11 f. The appropriate definitions and formulae to measure payments to potentially
- 12 offset damages under the WARN Act (29 U.S.C. § 2104(a)(2); Cal. Labor Code §
- 13 1402).

14 18. The questions set forth above predominate over any questions affecting only individual  
15 persons, and a class action is superior with respect to considerations of consistency, economy,  
16 efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of the  
17 WARN Act claims.

18 19. A class action is the superior method for the fair and efficient adjudication of this  
19 controversy. Defendants have acted or refused to act on grounds generally applicable to the class. The  
20 presentation of separate actions by individual class members could create a risk of inconsistent and  
21 varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially  
22 impair or impede the ability of class members to protect their interests.

23 20. Plaintiff is an affected employee who was terminated by Defendants on or about  
24 February 23, 2009, without the notice required by the WARN Act. He is thereby a member of the class.  
25 Plaintiff is committed to pursuing this action and has retained counsel with extensive experience  
26 prosecuting complex wage, employment and class action litigation. Accordingly, Plaintiff is an  
27 adequate representative of the class and has the same interests as all of its members. Further, Plaintiff's  
28 claims are typical of the claims of all members of the class, and Plaintiff will fairly and adequately

protect the interests of the absent members of the class.

21. Further, class action treatment of this action is authorized and appropriate under the WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor Code § 1404), which clearly provides that a plaintiff seeking to enforce liabilities under the WARN Act may sue either on behalf of his or her self, for other persons similarly situated, or both.

**COUNT I**

## **Violations of the United States Worker Adjustment and Retraining Notification Act**

22 Plaintiff reasserts and re-alleges the allegations set forth above.

23. At all times material herein, Plaintiff, and similarly situated persons, have been entitled to the rights, protections and benefits provided under the federal WARN Act, 29 U.S.C. § 2101 *et. seq.*

24. The federal WARN Act regulates the amount of notice an employer must provide to employees who will be terminated due to the employer's closing of a plant closing or mass layoffs, as well as the back pay and other associated benefits an affected employee is due based on a violation of the required notice period.

25. Defendants were, and are, subject to the notice and back pay requirements of the federal WARN Act because it is a business enterprise that employs 100 or more employees, excluding part-time employees, as defined in the Act. 29 U.S.C. § 2101(1)(A).

26. Defendants willfully violated the federal WARN Act by failing to provide the required notice.

27. Section 2103 of the federal WARN Act exempts certain employers from the notice requirements of the Act. 29 U.S.C. § 2103(1)-(2). None of the federal WARN Act exemptions apply to Defendants. Accordingly, Plaintiff and class members must receive the notice and back pay required by the federal WARN Act (29 U.S.C. § 2102 and 2104).

28. Plaintiff and all similarly situated employees have been damaged by Defendants' conduct constituting violations of the federal WARN Act and are entitled to damages for their back pay and associated benefits for each day of the violation because Defendants have not acted in good faith nor with reasonable grounds to believe its acts and omissions were not a violation of the federal WARN Act.

**COUNT II****Violations of the California Worker Adjustment and Retraining Notification Act**

29. Plaintiff reasserts and re-alleges the allegations set forth above.

30. At all times material herein, Plaintiff, and similarly situated persons, have been entitled to the rights, protections and benefits provided under the California WARN Act, California Labor Code § 1400, *et. seq.*

31. The California WARN Act regulates the amount of notice an employer must provide to employees who will be terminated due to the employer's layoffs, as well as the back pay and other associated benefits an affected employee is due based on a violation of the required notice period.

32. Defendants were, and are, subject to the notice and back pay requirements of the California WARN Act because it is a covered establishment that employs 75 or more employees, excluding part-time employees, as defined in the Act. Cal. Labor Code § 1400.

33. Defendants willfully violated the California WARN Act by failing to provide the required notice.

34. The California WARN Act exempts certain employers from the notice requirements of the Act. None of the California WARN Act exemptions apply to Defendants. Accordingly, Plaintiff and class members must receive the notice and back pay required by the California WARN Act.

35. Plaintiff and all similarly situated employees have been damaged by Defendants' conduct constituting violations of the California WARN Act and are entitled to damages for their back pay and associated benefits for each day of the violation because Defendants have not acted in good faith nor with reasonable grounds to believe its acts and omissions were not a violation of the California WARN Act.

**PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff, and all similarly situated employees, demand judgment against Defendants and pray for:

- (1) an order certifying that the action may be maintained as a class action under Federal Rule of Civil Procedure 23;
- (2) designation of Eric Rubaker as the representative of the class, and counsel of

- 1 record as Class Counsel;
- 2 (3) compensatory damages in an amount equal to at least the amounts provided by
- 3 the WARN Act (29 U.S.C. § 2104(a); Cal. Labor Code § 1402(a));
- 4 (4) reasonable attorneys' fees, costs and disbursements as allowed by the WARN Act
- 5 (20 U.S.C. § 2104(1)(6); Cal. Labor Code § 1404); and
- 6 (5) such other relief as the Court deems fair and equitable.

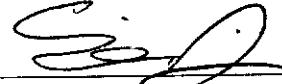
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby requests trial by jury of all issues triable by jury.

9  
10 DATED: February 26, 2009

Respectfully submitted,

11  
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